

EXHIBIT 3

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE: Chapter 11
W.R. Grace & Co., et al.,
Debtor(s). Bankruptcy #01-01139 (JKF)

Wilmington, DE
February 25, 2002
8:00 a.m.

TRANSCRIPT OF MOTIONS HEARING
BEFORE THE HONORABLE JUDITH K. FITZGERALD
UNITED STATES BANKRUPTCY JUDGE

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1 Baena. Because in a number of cases, in fact, the individuals
2 had filed the proofs of claim in advance. Not in all cases,
3 but in some. And so the issue simply didn't come up in the
4 context you're raising it now.

5 MR. BAENA: I agree. But --

6 MR. BERNICK: And --

7 MR. BAENA: -- if I may finish, Mr. Bernick. The
8 fundamental problem with Mr. Bernick's iteration of the
9 problem is that he says we have to have this information
10 before we can determine the dollars. That's not a role you
11 need to play in this case. He's looking for a precise
12 determination of the value of a claim. If this process is
13 going to be estimation, we've got to decide are we estimating
14 property damage claims generally, or are we estimating the
15 claim of each individual Claimant. He's taking you down the
16 road where you will be estimating each claim.

17 THE COURT: Well, I'm not going to estimate each
18 claim. If I have to try claims, I'll be making findings with
19 respect to each claim. And it probably won't be done here.
20 So that's a whole different --

21 MR. BAENA: Or in this lifetime.

22 THE COURT: Well, it's a whole different issue. I
23 need a motion. If you're gonna request that a class proof of
24 claim be filed, I need an appropriate motion by a
25 representative of the putative class by a law firm that is

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1 competent to handle it. Until I get such a motion there will
2 be no class proofs of claim. Because I think that's what I
3 need.

4 MR. BAENA: We --

5 THE COURT: So until I get it, all issues are
6 preserved. There are no class proofs of claim until I get
7 through an appropriate motion process.

8 MR. BAENA: We need to give notice of that --

9 THE COURT: Yes.

10 MR. BAENA: -- to each of those people who might have
11 the right to file a class --

12 THE COURT: Well --

13 MR. BAENA: -- proof of claim.

14 THE COURT: -- that's the other problem.

15 MR. BAENA: To the class reps.

16 THE COURT: Oh, the class reps.

17 MR. BAENA: Or the putative class reps. We need to
18 give them notice of that.

19 MR. BERNICK: I'm sorry. I guess I'm sitting out
20 there a little bit. What we would be proposing in order to
21 keep the ball rolling here, Your Honor, is to keep on going
22 forward with the bar date and the people --

23 THE COURT: Oh, yes.

24 MR. BERNICK: -- can file the proof of claims. If
25 they want to file a class proof of claim, they can do exactly

1 what happened in the First Equity case, which is they can file
2 a class proof of claim. There's nothing about the bar date
3 notice process that mutilate that. In this case everybody had
4 to file. And then later on, actually the motion for class
5 certification that was made was with respect to the 2,000
6 people that filed. And it was at that point that the Court --
7 I'm a little concerned with this. That if you take the motion
8 of the class claim now, you won't have the same information
9 that she had when she decided that case.

10 THE COURT: Well, I think --

11 MR. BAENA: This is an ambush, Judge.

12 THE COURT: -- what she did was took the motion to
13 approve the class proof of claim when the class proof of claim
14 was filed. I think that's how it happened in that case.

15 MR. BERNICK: That -- no, I mean the class proof of
16 claim was filed, however, after the bar date. She set the bar
17 date. All the claims came in, including a proposed class
18 proof of claim. And then she took up the question of whether
19 Rule 23 should apply.

20 THE COURT: Okay. Well, I think with respect to the
21 property damage claims, not the Zonolite issues, I'm not sure
22 it's going to make a difference. Because we need a proof of
23 claim that's going to identify the basics that I've already
24 put on the record. That's what I'm going to rule. I hope you
25 folks will be able to find something that is acceptable to all

1 of you in terms of the format. But that's what I think this
2 case needs. I don't expect it to be a massive undertaking. I
3 do expect it to provide essential information. So let's get
4 that far. Let's get a proof of claim together. If you file a
5 motion to have a class proof of claim filed at some point,
6 it'll get scheduled and I'll hear it. Unless and until I get
7 that motion there will be no class proofs of claim, because I
8 think that's the way I need to get it raised.

9 MR. BERNICK: And with respect to ZAI, same approach?

10 THE COURT: Well, yeah. I mean with respect to the
11 need for an appropriate motion, I think I have to have an
12 appropriate motion. Now, I do have motions pending in the ZAI
13 matters to certify classes, which I don't have with respect to
14 these property damages issues. So maybe it's a slight --
15 there is a slight difference out there. But I'm not sure it's
16 a material difference. I think I need an appropriate motion
17 to file a class-proof of claim. You know, not on the property
18 damage side -- on the Zonolite issues, it appears that all
19 parties are in agreement that there are going to be some
20 issues that will be common, primarily on risk factors and
21 liability size.

22 MR. BERNICK: That's absolutely correct. The
23 significance of the proof of claim forms of ZAI are exactly
24 the same, but a little bit more dramatic. With respect to
25 ZAI, again in order to determine even whether there are --

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